IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C .W.P.No.17066 of 2006 (O&M)
DATE OF ORDER:

Iftikkar Hasan and Others

...Petitioner(s)

Versus

Commissioner and Secretary Department Co-operation, Haryana and Others.

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Sh. R.S. Tacoria, Advocate and Sh. K.K. Garg, Advocate for the petitioner.
Mr. Hawa Singh Hooda, Advocate General, Haryana assisted by Sh. Jitender Chauhan, Addl.A.G, Haryana.
Mr. Shailender Jain, Advocate for respondent No.6.
Sh. J.R. Yadav, Advocate in C.M.No.20616 of 2006.
Sh. A.K. Chopra, Sr. Advocate with Mr. J.P. Yadav for respondents No.7 to 11 in C.M.No.19625 of 2006.
Sh. R.L. Sharma, Advocate on behalf of G.P. Singh, Om Parkash Mittal, Smt Kamal Kalra and Smt Rekha Sharma all members of Society in C.M.No.2054 of 2006.
Sh. Om Parkash, Mittal, Advocate in C.M.No.2054 of 2006.
Sh. Attar Singh, applicant-member objecting in C.M. No.21145 of 2006.
Mr. Shaju Francis, Advocate for applicant in I.A. No.20603-20604 of 2006 (contesting).
Mr. Roshan Lal Sharma and Mr. Sewa Singh, Advocates for G.P. Singh, Om Parkash and Kamla Kalra.

M.M. AGGARWAL,J

Petitioners are members of Managing Committee of Saraswati Kunj Cooperative House Building Society Limited, Wazirabad, District Gurgaon. They are stated to have been elected as members of Managing

Committee in September 2002.

According to the petitioners, their term was five years and they had been performing their duties as per the provisions of the Haryana Cooperative Societies Act and the Rules framed thereunder but the Managing Committee had been illegally removed vide order dated 2.2.2005 by the Assistant Registrar. Appeal filed by the petitioner-Managing Committee against the action of the Assistant Registrar had been illegally dismissed by the Registrar vide order dated 7.6.2006. A revision filed under Section 115 of the Act was also wrongly dismissed vide order dated 18.10.2006.

This is petition for quashing the orders of the respondents removing the Society and appointment of the Board, which is respondent No.6 and also the action of the respondents to hold new elections.

In this case, there were five members of the Managing Committee. Two are stated to have already died and now remaining three are petitioners. Ex.P1 shows that earlier also an order under Section 34 of the Act was made by the Assistant Registrar on 1.12.2000 since the Society did not produce the record demanded but that order was set aside vide order dated 29.4.2002 by the Deputy Registrar, Cooperative Societies, Gurgaon on appeal having been filed by the Society under Section 114 of the Act. Then two months' time to comply with the order of Assistant Registrar and produce record vide Ex.P-1/A was given. Thereafter show cause notice under Section 34 dated 22.8.2003 issued by the Assistant Registrar to the Managing Committee of the Society and its members that the record was not being produced and why action be not taken under Section 34 of the Act. Copy Annexure P-2 is the reply to the show cause notice. Thereafter vide

order dated 29.11.2004 copy Annexure P-3, the Managing Committee was suspended and an Administrator was appointed for a period of six months. Thereafter Assistant Registrar made order copy Annexure P-4 taking various facts into consideration and then had removed the Managing Committee of the Society and had appointed Board of Administrator under Section 34(1) of the Act for a period of six months or till the Committee was constituted. Society had filed appeal under Section 114 of the Act, which was dismissed vide order dated 7.6.2006 by the Registrar vide copy Annexure P-6. Ex.P12 is the notice dated 12.10.2006 for election of Managing Committee of the Society to be held on 19.11.2006.

This petition was taken up on 30.10.2006 when Sh. Shailender Jain, Advocate for respondent No.6 had put in appearance. He filed reply. Thereafter, Court had directed on 7.11.2006 that election process shall be subject to ultimate decision in the writ petition. Further order dated 9.11.2006 shows that election process was stayed till further orders.

Counsel for the petitioners had argued that the act of the respondents in removing Managing Committee was illegal and malafide act and that Society had complied with show cause notice and had produced records/documents. From the order of the Assistant Registrar, it was argued that the charges had been mentioned in the show cause notice and compliance report in respect of nine points mentioned had been asked. Society had complied with the same but Assistant Registrar without discussing the same had passed order copy Annexure P-3 on 29.11.2004 suspending the Managing Committee and then made final order of removal of the Managing Committee without taking into account reply of the Managing Committee. It was argued that principles of natural justice had

not been complied.

In the present case, the Managing Committee of the Society was placed under suspension with immediate effect vide order dated 29.11.2004 copy Annexure P-3 and then Inspector of Cooperative Societies, Gurgaon-I was appointed as Administrator for a period of six months or till the Committee was constituted whichever was earlier. Thereafter vide order dated 2.2.2005 copy Annexure P-5, the Managing Committee of the Society was removed and a Board of Administrator was appointed for six months or till the Committee was constituted whichever is earlier.

Respondent No.6 is stated to be Board of Administrators so appointed. Their term had been extended by various orders upto 28.11.2006. It is a fact that after order dated 29.11.2004, the Managing Committee i.e present petitioners have not been been allowed to administer the affairs of the Society. Petitioners had filed appeal and revisions, which had since been dismissed. Thereafter election process had started and there was a notice copy Annexure P-12 in Danik Jagran dated 12.10.2006.

During the course of arguments, it came out that the present petitioners had also filed nominations for contesting the elections. Some miscellaneous applications had been filed by the members of the Society and some others, who had also filed nominations for contesting the elections to become parties and oppose the petition.

There had been five members of the Managing Committee. Two have already died and there are three petitioners now before this Court. The term of the Managing Committee would otherwise also expire in September 2007. It is already January 2007 and only 7-8 months are left. In any case, fresh elections are otherwise to be there in another 6-7 months.

Present writ petition was filed after the election programme had been published.

It was argued on behalf of the State that as per Section 28(2) of the Act, once the election process had started, it shall not be postponed and disputes, if any, shall be entertained after the election process is complete in accordance with the provisions of the Act.

In the facts and circumstances of the case, where the Managing Committee (petitioner) had not been in charge of the business of the Society since 29.11.2004 and out of five, two members of Managing committee have already died and the term of the Managing Committee is going to expire in September and elections are otherwise to be held in a period of 6-7 months otherwise, I do not find it fit to decide this petition on merits and set aside the orders of respondent authorities. As such, this petition is dismissed.

Let election process start afresh and election be conducted expeditiously so that election process is completed by 31.3.2007 and New Managing Committee take charge of the affairs of the Society.

Meanwhile, Registrar may appoint some Administrator for conducting the day-to-day business of the Society.

2007 (M.M. AGGARWAL)

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